
A BILL FOR AN ACT

RELATING TO CONCESSIONS ON PUBLIC PROPERTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that concessions on
2 public property generally provide two main benefits. First,
3 they satisfy the general public's demand for goods, wares,
4 merchandise, or services at the properties where the concession
5 is located. Second, they provide revenue to support the
6 properties' operations.

7 Currently, the State's concession law provides that a
8 government agency shall base its award of a concession mainly on
9 the highest responsible bid. However, the "best value" process,
10 also known as competitive sealed bid proposals, allows
11 consideration of each offeror's potential benefit to the general
12 public, such as enhancement of customers' experiences and not
13 just the highest concession bid submitted to the government.

14 The purpose of this Act is to amend the requirements for
15 the awarding of concession contracts on public property.

16 SECTION 2. Section 102-1, Hawaii Revised Statutes, is
17 amended to read as follows:



1 ~~"§102-1 [Definition. The word "concession" as used in~~
2 ~~this chapter]~~ Definitions. As used in this chapter:

3 "Concession" means the grant to a person of the privilege
4 to:

5 (1) Conduct operations involving the sale of goods, wares,
6 merchandise, or services to the general public
7 including but not limited to food and beverage
8 establishments, retail stores, motor vehicle rental
9 operations under chapter 437D, advertising, and
10 communications and telecommunication services, in or
11 on buildings or land under the jurisdiction of any
12 government agency;

13 (2) Operate a parking lot on property owned or controlled
14 by the State with the exception of buildings,
15 facilities, and grounds operated by or otherwise under
16 the jurisdiction of the department of education; and

17 (3) Use, for compensation, space on public property to
18 display advertising, or to conduct operations for
19 communications or telecommunications purposes.

20 "Offeror" means a person submitting a bid or proposal, as
21 the case may be, for a concession."



1 SECTION 3. Section 102-2, Hawaii Revised Statutes, is
2 amended by amending its title and subsection (a) as follows:
3 "§102-2 **Contracts for concessions; bid or proposal**
4 **required, exception.** (a) Except as otherwise specifically
5 provided by law, no concession or concession space shall be
6 leased, let, licensed, rented out, or otherwise disposed of
7 either by contract, lease, license, permit or any other
8 arrangement, except under contract let after public notice for
9 sealed bids or proposals in the manner provided by law; provided
10 that the duration of the grant of the concession or concession
11 space shall be related to the investment required but in no
12 event to exceed fifteen years for the initial term, and if
13 amended, any then remaining term plus any agreed extension
14 thereof awarded or granted by the government agency making a
15 lease or contract or other arrangement relating to a concession;
16 provided further that and subject to approval by county council
17 resolution, the fifteen-year limit shall not apply to nonprofit
18 corporations organized pursuant to chapter 414D."

19 SECTION 4. Section 102-3, Hawaii Revised Statutes, is
20 amended to read as follows:



1 "§102-3 ~~[Qualification of bidders.]~~ Qualifications.
2 Before any prospective [~~bidder~~] offeror is entitled to submit
3 any bid or proposal for the occupancy of any [~~such~~] space, the
4 prospective [~~bidder~~] offeror shall, not less than six calendar
5 days prior to the day designated for opening bids [~~7~~] or
6 proposals, give written notice to the officer charged with
7 letting the contract of the prospective [~~bidder's~~] offeror's
8 intention to bid [~~7~~] or submit a proposal, and the officer shall
9 satisfy oneself of the prospective [~~bidder's~~] offeror's
10 financial ability, experience, and competence to carry out the
11 terms and conditions of any contract that may be awarded. For
12 this purpose, the officer may, in the officer's discretion,
13 require prospective [~~bidders~~] offerors to submit answers, under
14 oath, to questions contained in a form of questionnaire setting
15 forth a complete statement of the experience, competence, and
16 financial standing of the prospective [~~bidders.~~] offerors.
17 Whenever it appears to the officer, from answers to the
18 questionnaire or otherwise, that any prospective [~~bidder~~]
19 offeror is not fully qualified and able to carry out the terms
20 and conditions of the contract that may be awarded, the officer
21 shall, after affording the prospective [~~bidder~~] offeror an



1 opportunity to be heard and if still of the opinion that the
2 [~~bidder~~] offeror is not fully qualified to carry out the terms
3 and conditions of the contract that may be awarded, refuse to
4 receive or consider any bid or proposal offered by the
5 prospective [~~bidder-~~] offeror. The officer charged with letting
6 the contract shall not divulge or permit to be divulged the
7 names and the number of persons who have submitted their notice
8 of intention to bid or submit a proposal until after the opening
9 of bids[-] or proposals. All information contained in the
10 answers to questionnaires shall remain confidential, and any
11 government officer or employee who knowingly divulges or permits
12 to be divulged any [~~such~~] of that confidential information to
13 any person not fully entitled thereto shall be fined not more
14 than \$250. Questionnaires so submitted shall be returned to the
15 [~~bidders~~] offerors after having served their purpose."

16 SECTION 5. Section 102-4, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "§102-4 Advertisement [~~for bids~~]. [~~Public notice~~]
19 Advertisement of a call for bids or proposals shall be made
20 either by:



- 1 (1) Newspaper publication for not less than three
2 different days statewide, with respect to any state
3 agency, or county-wide within the particular county
4 with respect to any county or county agency~~[-]~~; or
5 (2) Online advertisement on the awarding government
6 agency's internet site; provided that the online
7 advertisement shall remain posted until the due date
8 for bids or proposals has passed."

9 SECTION 6. Section 102-5, Hawaii Revised Statutes, is
10 amended to read as follows:

- 11 "§102-5 ~~[Bids,]~~ Bid opening; proposal opening; rejection.
12 [The] (a) For a call for bids, the time of opening of [such]
13 the tenders shall be not less than [five] fifteen days after the
14 [last publication.] initial advertisement date. All bids shall
15 be sealed and delivered to the officer advertising therefor and
16 shall be opened by the officer at the hour and place to be
17 stated in the call for tenders in the presence of all ~~[bidders]~~
18 offerors who attend, and may be inspected by any ~~[bidder-]~~
19 offeror.
20 (b) For a call for proposals, the deadline for proposals
21 shall be not less than thirty days after the initial



1 advertisement date. Proposals shall be opened by the officer so
2 as to avoid disclosure of the contents to competing offerors and
3 persons not involved in the evaluation process during the
4 process of evaluation. A register of proposals shall be
5 prepared by the officer and shall be open for public inspection
6 after the contract is awarded.

7 (c) For a call for proposals, discussions may be conducted
8 with all responsible offerors who submit proposals determined by
9 the officer as qualified to be selected for a contract award.
10 Offerors shall be accorded fair and equal treatment with respect
11 to any opportunity for discussion and revision of proposals.
12 Revisions may be permitted after submissions and prior to the
13 award for the purpose of obtaining the best and final offer.

14 (d) All bids [which] or proposals that do not comply with
15 the requirements of the call for tenders shall be rejected. The
16 officer calling for bids or proposals may reject any or all bids
17 or proposals and waive any defects when in the officer's opinion
18 [such] the rejection or waiver will be for the best interest of
19 the public."

20 SECTION 7. Section 102-6, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§102-6 Deposits of legal tender, etc., to accompany
2 bid[-] or proposal. (a) All bids or proposals shall be
3 accompanied by a deposit of legal tender or by a certificate of
4 deposit, share certificate, cashier's check, treasurer's check,
5 teller's check, or official check drawn by, or a certified check
6 accepted by, a bank, savings institution, or credit union
7 insured by the Federal Deposit Insurance Corporation or the
8 National Credit Union Administration, in a sum not less than
9 five per cent of the amount bid[-] or proposal, payable at sight
10 or unconditionally assigned to the officer advertising for
11 tenders[-] or proposals; provided that when the amount of the
12 bid or proposal exceeds \$50,000, the deposit shall be in a sum
13 not less than \$2,500 plus two per cent of the amount in excess
14 of \$50,000.

15 If the [~~bid~~] deposit is in the form of a surety bond, it
16 shall be issued in accordance with subsection (b).

17 (b) A bid or proposal may be accompanied by a surety bond
18 executed to the officer calling for bids or proposals by the
19 [~~bidder~~] offeror as principal and by any bonding company listed
20 in the United States Treasury List; provided that the bond
21 furnished by any surety listed shall not exceed the bonding



1 capacity rating of that surety on the Treasury List; in a sum of
2 equal amount, conditioned upon the [~~bidder~~] offeror entering
3 into the contract and furnishing satisfactory security within
4 ten days after the award or within any further time as the
5 officer may allow, if the [~~bidder~~] offeror is awarded the
6 contract."

7 SECTION 8. Section 102-7, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "§102-7 Forfeiture of deposits, return thereof. If the
10 [~~bidder~~] offeror to whom the contract is awarded fails or
11 neglects to enter into the contract and furnish satisfactory
12 security, as required by sections 102-11 and 102-12, within ten
13 days after the award or within [~~such further~~] an additional
14 period of time as the officer awarding the contract may allow,
15 the officer shall pay the amount of the deposit into the
16 treasury as a realization of the State, county or other
17 governmental agency, as the case may be. If the contract is
18 entered into and the security furnished within the required
19 time, the deposit, certificate, or check shall be returned to
20 the successful [~~bidder~~] offeror. The deposits made by the
21 unsuccessful [~~bidders~~] offerors shall be returned to them after



1 the contract is entered into or, if the contract is not awarded
2 or entered into, after the officer's determination to publish
3 another call for tenders."

4 SECTION 9. Section 102-8, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§102-8 Bond may be substituted for deposits. In lieu of
7 the deposits prescribed by section 102-6, a bid or proposal may
8 be accompanied by a surety bond executed to the officer calling
9 for bids or proposals by the [~~bidder~~] offeror as principal and
10 by any corporation organized for the purpose of becoming surety
11 on bonds, authorized under the laws of the United States or of
12 the State to act as surety and doing business in the State under
13 the laws of the United States or of the State, if a foreign
14 corporation, and under the laws of the State, if a Hawaii
15 corporation, as surety, in a penal sum of equal amount,
16 conditioned upon the [~~bidder~~] offeror entering into the contract
17 and furnishing satisfactory security within ten days after the
18 award or within any further time as the officer may allow, if
19 the [~~bidder~~] offeror is awarded the contract."

20 SECTION 10. Section 102-9, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§102-9 [~~Contracts to be in writing; highest responsible~~
2 ~~bidder.~~] Awarding of contracts. (a) All [~~such~~] contracts shall
3 be in writing[~~7~~] and shall be executed by the officer letting
4 the contract in the name of the State, county, or the board,
5 bureau, or commission thereof authorized to let contracts in its
6 own name, as the case may be[~~7~~and].

7 (b) For a call for bids, the award shall be made with the
8 highest responsible [~~bidder,~~] offeror, if [~~such bidder~~] an
9 offeror qualifies by providing the security required by sections
10 102-11 and 102-12. If the highest and best bid or any other bid
11 is rejected, or if the [~~bidder~~] offeror to whom the contract was
12 awarded fails to enter into the contract and furnish
13 satisfactory security, the officer may, in the officer's
14 discretion, award the contract to the next highest and best
15 remaining responsible [~~bidder.~~] offeror.

16 (c) For a call for proposals, the officer shall designate
17 a review committee consisting of a minimum of three persons. In
18 designating the members of the review committee, the officer
19 shall ensure the impartiality and independence of committee
20 members. The committee shall review and evaluate all proposals
21 and other pertinent information and prepare a list of qualified



1 offerors. The committee shall rank a minimum of three offerors
2 based on the review and evaluation of the proposals and other
3 pertinent information and send the ranking to the officer. The
4 officer shall negotiate a contract with the first ranked
5 offeror. If the parties are unable to come to an agreement on
6 the terms of the final contract, the officer may decline to
7 award the contract to the highest ranked offeror and negotiate
8 directly with the next highest ranked offeror. The process may
9 be repeated by the officer until an acceptable contract is
10 negotiated. The contract file shall document the reasons for
11 the awarding of the contract to the eventual awardee and the
12 reasons for failure to award the contract to any higher ranked
13 offeror.

14 (d) All persons involved in the review, evaluation, or
15 awarding of contracts under this section shall adhere to all
16 requirements of ethical public procurement under section
17 103D-101."

18 SECTION 11. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 12. This Act shall take effect on July 1, 2030.



Report Title:

Concessions; Public Property; Bids; Proposals

Description:

Allows proposals to be submitted for concessions on public property. Establishes criteria for acceptance and awarding of proposals for concessions on public property. Specifies advertising requirements for bids or proposals and allows for online advertising. Requires that concession contracts be awarded by a procurement officer based on the rankings of a committee of a minimum of three individuals designated by the procurement officer to review and evaluate proposals from offerors. Requires that all persons involved in the review, evaluation, or awarding of concession contracts adhere to all requirements of ethical public procurement under section 103D-101, Hawaii Revised Statutes. Takes effect on 7/1/2030.
(SD2)

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